IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.11629 OF 1997 and WRIT PETITION NO. 17747 of 2000

M.Perumal .. Petitioner in
W.P.No.11629 of 1999
& 2nd respondent in
W.P.No.17747 of 2000

Union of India,
by Commissioner of Income Tax,
Tamil Nadu V (Disciplinary Authority),
Office of the Commissioner of
Income Tax,
121, Mahathma Gandhi Road,
Madras-600 034. .. Petitioner in
W.P.No.17747 of 2000

-Vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Commissioner of Income Tax,
Tamil Nadu (V) (Disciplinary Authority),
Income Tax Department,
121, Mahatma Gandhi Road,
Madras-600 034. .. Respondents in
W.P.No.11629 of 1999
3. The Central Administrative Tribunal
rep. by its Registrar,
High Court Building,
Chennai. .. Respondent No.1
in WP.No.17747of2000

!For Petitioner in
W.P.11629 of 1997 &
Respondent No.2 in
W.P.17747 of 2000 : Mr.Vijaynarayan

For Petitioner in
W.P.17747 of 2000 : Mr.M.Velusamy

^For Respondents in
W.P.11629 of 1997 : Mr.D.Krishnakumar, Spl.G.P.

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari for the reliefs as stated therein.

:ORDER

F.M.IBRAHIM KALIFULLA, J.

Writ Petition in W.P.No.11629 of 1997 has been preferred by one Thiru M.Perumal, who is employed in the Office of the Income Tax Department and his challenge is to the proceedings of the first respondent therein, dated 5-3-1997, wherein the first respondent, while informing the second respondent that the community certificate dated 30.4.1983 produced by the petitioner at the time when he joined the service was not a true one, stated that appropriate action should be taken against him.

2. Writ Petition in W.P.No.17747 of 2000 has been filed by the Union of India, represented by the Commissioner of Income Tax, challenging the order of the Central Administrative Tribunal in O.A.No.689 of 19 98 dated 17-4-2000 wherein, the Tribunal has directed the Union of India, to promote the petitioner in W.P.No.11629 of 1997 to the post of Income Tax Officer as per the panel drawn for the year 1997-98.

3. For the sake of convenience, the petitioner in W.P.No.11629 of 19 97 will be hereinafter referred to as 'the petitioner' and the petitioner in W.P.No.17747 of 2000 will be hereinafter referred to as ' Union of India', while the first respondent in W.P.No.11629 of 1997 will be herein after referred to as 'the District Collector'.

4. The brief facts which are relevant for the disposal of these Writ Petitions are, that the petitioner joined the services of the Union of India in the Income Tax Department as 'Upper Division Clerk' with effect from 21-11-1983 under the quota reserved for Scheduled Tribes. At the time of his appointment, he produc ed a community certificate dated 30-4-1983 which was issued by the Additional Tahsildar Veerakeralampudur situated in Tirunelveli District. Subsequently, he was promoted as Head Clerk on 3-11-1989 and again as Inspector on 26-6-1991 . The petitioner was considered for further promotion in the DPC and it transpires that his name was also recommended for promotion to the post of Income Tax Officer. However, the said promotion was kept in sealed cover.

5. In the meantime, based on the proceedings of the District Collector, Tirunelveli District, dated 5-3-1997, the petitioner was issued with a Charge Memo dated 20-5-1997 and the said proceedings were pending. In

fact, at the time, when the Charge Memo dated 20.05.1997 was issued to the petitioner, the petitioner was unaware of the order of the District Collector dated 5-3-1997. The petitioner is stated to have filed W.P.No.10642 of 1997 and only pursuant to the orders of this Court, the petitioner was furnished with the copy of the proceedings of the District Collector dated 5-3-1997. After receipt of the copy of the proceedings dated 5-3-1997, the petitioner preferred Writ Petition in W.P.No.11629 of 1997, challenging the said proceedings. In the mean time, the petitioner preferred O.A.No.689 of 1998 before the Central Administrative Tribunal for a direction to promote him as Income Tax Officer as per the Panel drawn for the year 1997-98. The Tribunal by its order dated 17-4-2000, directed the Union of India, to promote the applicant to the post of Income Tax Officer as per the panel drawn for the year 1997-98 since it was admitted in the counter that the DPC considered the petitioner for promotion and his name was also recommended for promotion.

6. The petitioner, while challenging the order of the District Collector dt.5.3.97, would contend that the order of the District Collector in stating that no community Certificate was issued by the Taluk Office, Veerakeralampudur on 30.04.83 without holding any enquiry and without giving any opportunity to the petitioner was illegal and was in a total violation of principles of natural justice and therefore, the same was liable to be set aside. According to the petitioner, the community Certificate dt.30.4.83 issued by the Additional Tahsildar of Veerakeralampudur was a genuine Certificate, that prior to issuance of Circular dt.19.6.84 of the Chief Secretary to all the revenue Authorities and also prior to issuance of G.O.Ms.No.1201 Social Welfare dt.31.5.1985, no permanent records were maintained in various Taluk Offices and therefore in the absence of any definite conclusion to the effect that the Community Certificate, issued to

the petitioner on 30.4.1983, was not factually issued by the concerned Additional Tahsildar on that day, the impugned order of the District Collector dt.05.03.1997 cannot be allowed to stand.

7. The petitioner further contended that in respect of his wife, Tmt. Mahalakshmi, who was related to him as she is none other than the daughter of his own aunt, namely his father's sister and in respect of whom also a Community Certificate bearing No.2046/85 dt.06.11.1985 was issued by the Tahsildar of Nanguneri and that the issuance of the said Certificate in favour of his wife was declared to be a true one by the District Collector himself and in such circumstances, the present order of the District Collector dt.5.3.97 in attempting to say that the community Certificate dt.30.4.1983 issued to the petitioner was not a true one cannot be accepted. According to the petitioner, the community Certificate of his wife was also the subject matter of challenge in W.P. No.11139 of 1995 and that by an order dt.16.12.99, this Court was pleased to hold that the said Certificate,issued to his wife, was a genuine one.

8. It is also contended by the petitioner that the order dt.16.12.9 9 in W.P. No.11139 of 1995 has also become final inasmuch as the said order was not challenged in the manner known to law. The petitioner

would further contend that so long as the community Certificate dt.3 0.04.1983 issued by the Additional Tahsildar of Veerakeralampudur is not cancelled in the manner known to law, the respondents cannot be allowed to contend that the petitioner does not belong to Scheduled Tribe and deprive him of the benefits under the said category.

9. As against the above said contentions raised on behalf of the petitioner, Mr. D. Krishnakumar, learned Special Government Pleader appearing for the District Collector would contend that in respect of various community Certificates issued in the respective Offices of the Tahsildar, the connected records are maintained, that in the case of the petitioner, though the signature of the Additional Tahsildar, who held the office as on 30.04.1983 tallied with his other signatures found in other records available in the said Office, since no records are available in the Additional Tahsildar's Office of Veerakaeralampudur, confirming the issuance of the Community Certificate dt.30.04.19 83 issued to the petitioner, it has to be held that the Certificate dt.30.04.1983 was not a genuine one and therefore the impugned order of the District Collector dt.05.03.1997 cannot be interfered with.

10. Mr. M. Velusamy, learned counsel appearing for the Union of India, the petitioner in W.P. No.17477 of 2000, contended that when the District Collector has issued the communication dt.05.03.1997 doubting the genuineness of the community Certificate dt.30.04.1983, the Union of India, cannot be directed to promote the petitioner as an income-tax Officer as has been directed by the Tribunal in its order dt.17 .04.2000 in O.A. No.689 of 1988. According to the learned counsel appearing for the Union of India, it is for the petitioner to establish that the community Certificate dt.30.04.1983 was true and that he did belong to Scheduled Tribe Community.

11. Having heard the learned counsel appearing for the parties, we are of the view that the order of the District Collector dt.05.03.199 7 cannot be allowed to stand for more than one reason. In the first place, before issuance of the said order dt.05.03.1997, the petitioner was not at all heard. There is nothing on record to show that before issuing the communication dt.05.03.1997, any notice was issued to the petitioner calling upon him to substantiate the genuineness of the Community Certificate dt.30.04.1983 issued to him at the relevant point of time.

12. On a reading of the proceedings dt.05.03.1997, it transpires that based on the Union of India's letters dt.07.10.1983 and 11.02.97, the District Collector came forward to issue the said letter dt.5.3.1997 to the effect that no community Certificate dt.30.04.1983 was issued by the Additional Tahsildar of Veerakeralampudur. In fact, there is no indication in the said letter as to any enquiry was conducted at all by the District Collector before reaching the said conclusion. It was specifically contended before us on behalf of the petitioner that the Certificate dt.30.04.1983 was really issued by one Sankaravel who was holding the post of Additional Tahsildar, Veerakeralampudur at the relevant point of time. In order to ascertain the said fact a direction was issued earlier by an order dt.25.02.2002 to the District Collector to file an affidavit. Pursuant to the

said direction, an additional affidavit came to be filed by the District Collector on 29.09.2002 confirming that Thiru Sankaravel was the Additional Tahsildar in the year 1983 and that his signature found in the Certificate dt.30.04.1983 tallied with his signatures found in other records.

13. It was further stated in the said additional counter affidavit that no entry had been made in the registers maintained in the taluk Office of Veerakeralampudur. It was also admitted that no record was available in respect of the issuance of the aforesaid Certificate in the said Taluk Office. In the files produced before us by the District Collector, we only find the concerned requisitions made by various individuals for the issuance of various Certificates in their favour and the endorsement made at the back of those requisitions of the individuals.

14. By relying upon the said file, learned Special Government Pleader wanted to contend that since the material paper such as any requisition said to have been made on behalf of the petitioner on 30.04.198 3 is not found, it has to be stated that no Certificate dt.30.04.1983 was ever issued from the Office of the Additional Tahsildar, Veerakeralampudur. We are unable to come to any such conclusion on the said basis.

15. It is relevant to state that though in the additional counter affidavit, it was contended that no entry was found in the registers maintained in the concerned Taluk Office, no such register was placed before us in support of the said stand. The only record relied upon by the District Collector and produced before us is the bunch of requisitions made by various individuals between 03.01.1983 and 03.06.198 3. The said bunch of papers had running page Nos.1 to 326. In the absence of any permanent register in regard to the issuance of the Certificates, it would be travesty of justice to simply rely upon the bunch of requisitions made by various individuals and draw any conclusion that the petitioner did not make any such requisition and therefore the Certificate dt.30.04.1983 could not have been issued to him. When the signature of the concerned Additional Tahsildar found in the Certificate dt.30.04.1983 is admitted by the District Collector as that of the concerned Additional Tahsildar, based on the verification made now, the said Certificate cannot be thrown out merely based on the averment contained in the counter affidavit or the additional affidavit made on behalf of the District Collector.

16. On behalf of the petitioner, it was pointed out that specific instructions came to be issued by the Chief Secretary to the Government of Tamil Nadu on 19.06.1984 and thereafter by way of Government Order only in G.O.Ms.No.1201 dt.31.05.1985 directing the revenue Officials to maintain registers for recording the dates of receipt of applications and the dates of issue of Certificates. In the circumstances, the averment made on behalf of the petitioner that only thereafter, permanent records came to be maintained at various Taluk Offices in regard to issuance of community Certificate and other Certificates was well founded.

17. That apart, the other submission made on behalf of the

petitioner that the community Certificate dt.06.11.1985 issued to the petitioner's wife P. Mahalakshmi by the Tahsildar of Nanguneri was declared to be a genuine one, that the said declaration was also upheld by this Court in W.P. No.11139 of 1995 in the order dt.16.12.99 also supports the case of the petitioner to a very large extent. The wife of the petitioner namely Tmt. P. Mahalakshmi is said to be none other than the daughter of his own paternal Aunt. In such circumstances, when the Certificate of P.Mahalakshmi also confirm to the effect that she belongs to Kondareddy community, a Scheduled Tribe community, the same reasoning would apply to the Certificate issued to the petitioner on 30.04.1983, in which event, the genuineness of the said Certificate cannot be called in question. Moreover, the Certificate dt.30.04.19 83 issued by the Additional Tahsildar, Veerasekarampudur is based on another Certificate issued earlier by the Deputy Tahsildar, Radhapuram dt.21.06.1977 in C.No.747/77. It is not the case of the District Collector that the said C.No.747/77 of the Deputy Tahsildar, Radhapuram was found to be a wrong entry and that no such Certificate was issued by the Deputy Tahsildar, Radhapuram on 21.06.1977. Therefore, the present order of the District Collector dt.05.03.97 in attempting to dislodge the veracity of the Certificate dt.30.04.1983 issued by the Additional Tahsildar, Veerakeralampudur was not based on any acceptable material nor any due exercise was carried out by the District Collector before issuing the said proceedings dt.05.03.97. If really, the Additonal Tahsildar, Veerakeralampudur had issued the Certificate dt.30.04.1983 in a flippant manner to the petitioner, it is not known as to why no action was taken against the concerned Additional Tahsildar for the dereliction of duty for having issued the said Certificate.

18. Therefore, a cumulative effect of the aforesaid factors only go to show that the proceedings of the District Collector dt.05.03.97 and the attempt of the District Collector to set at naught the effect of the community Certificate dt.30.04.1983 validly issued by the Additional Tahsildar, Veerasekarampudur cannot be allowed to stand. We therefore set aside the said order of the District Collector dt.05.03.1997. The writ petition in W.P. No.11629 of 1997 therefore stands allowed and the order impugned therein is hereby set aside. In view of the setting aside of the order dt.05.03.1997, there should be no impediment for the Union of India to carry out the direction of the Central Administrative Tribunal dt.17.04.2000 in O.A. No.689 of 1998. It is also open to the Union of India, if they are so advised, to verify as to whether Tmt.Mahalakshmi, the wife of the petitioner is none other than his own paternal aunt's daughter. If any such verification is sought to be made on behalf of the Union of India, the petitioner shall satisfy the Authorities concerned. In the light of the abovesaid conclusion, there is no scope for interfering with the order of the Central Administrative Tribunal dt.17.04.2000 in O.A. No.689 of 19 98 and the writ petition in W.P. No.17747 of 2000 fails and the same is dismissed with the above observations.

19. In the result, W.P. No.11629 of 1997 is allowed and W.P. No.177 47 of 2000 is dismissed. No costs.

Index:- Yes

suk/ssa.

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Tirunelveli District,
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